

ENTERED

October 10, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

STATE OF TEXAS, §
§
VS. § CIVIL ACTION NO. 3:19-0240
§
BENJAMIN QUAINTANCE-EL §

MEMORANDUM OPINION AND ORDER

Benjamin Quaintance-El, a defendant in a traffic case pending in the Municipal Court of the City of Friendswood, filed a *pro se* notice of removal (Dkt. 1) to this Court. The Court will summarily **remand** this case to the Municipal Court of the City of Friendswood for the reasons explained below.

Quaintance-El is the defendant in two cases pending in municipal court. *See State of Texas v. Benjamin Bernard Quaintance-El*, Case Numbers 18TR-003601 and 18TR-003602. According to documents attached to his notice of removal, Quaintance-El is charged with operating a motor vehicle without a valid license (Case Number 18TR-003602) and without displaying a valid license plate (Case Number 18TR-003601) (Dkt. 1, at 22-23). He removed both cases pursuant to 28 U.S.C. § 1455 and alleges that the prosecutions against him violate his constitutional rights (*id.* at 2-3).

A party who removes a criminal prosecution must file a notice of removal “containing a short and plain statement of the grounds for removal.” 28 U.S.C. § 1455(a); *see* 28 U.S.C. § 1455(b)(2). In addition, the party must file the notice of removal “not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier,” unless the party shows good cause for a later filing. 28

U.S.C. § 1455(b)(1). The statute requires the district court to issue an order for “summary remand” if “it clearly appears on the face of the notice and any exhibits annexed thereto that the removal should not be permitted.” 28 U.S.C. § 1455(b)(4).

Criminal cases are removable only in very limited circumstances. *Kruebbe v. Beevers*, 692 F. App’x 173, 175-76 (5th Cir. 2017); *United States v. Heon Jong Yoo*, No. 6:18CR16, 2018 WL 9362568, at *2 (E.D. Tex. Nov. 8, 2018). Federal statutes authorize removal of certain criminal actions against federal officials or agencies, 28 U.S.C. § 1442, against members of the federal armed forces, 28 U.S.C. § 1442a, or against persons protected by, or officials enforcing, civil-rights statutes, 28 U.S.C. § 1443.

In this case, summary remand is required under § 1455(b)(4) because the removal was untimely. Quaintance-El presents exhibits demonstrating that he was arraigned in both cases on October 30, 2018, at the latest (Dkt. 1, at 26-27). He did not remove this action until July 23, 2019, well after the thirty-day deadline set by § 1455(b)(1), and makes no showing of good cause for the delay. Additionally, remand is required because the notice of removal fails to state grounds for removal of the case. Although Quaintance-El cites to 28 U.S.C. § 1455, the Fifth Circuit clearly has held that this statute provides only removal procedures, and not independent authorization for removal. *Kruebbe*, 692 F. App’x at 176. His citation to the Fourteenth Amendment and other unspecified constitutional rights is insufficient to show that removal is proper under 28 U.S.C. § 1443 or any other provision cited above. *See id.* at 175 (citing *Georgia v. Rachel*, 384 U.S. 780, 792 (1966)).

The Court therefore **ORDERS** as follows:

1. *State of Texas v. Benjamin Bernard Quaintance-El*, Case Number 18TR-003601, is summarily **REMANDED** to the Municipal Court of the City of Friendswood pursuant to 28 U.S.C. § 1455(b)(4).
2. *State of Texas v. Benjamin Bernard Quaintance-El*, Case Number 18TR-003602, is summarily **REMANDED** to the Municipal Court of the City of Friendswood pursuant to 28 U.S.C. § 1455(b)(4).

The Clerk will provide a copy of this order to the parties.

SIGNED at Galveston, Texas, on October 10th, 2019.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE